APPENDIX

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COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT FOR THE COMMONWEALTH,

At Boston, September 29, 1995

In the case of

COMMONWEALTH

vs.

ROBERT LAFFOND.

pending in the Pittsfield District Court for the County of Berkshire

ORDERED, that the following entry be made in the docket; viz.,--

Judgment affirmed. . . .

By The Court,

/s/ Nancy Tuck Foley, Clerk

September 29, 1995

Over

94-P-1961 Appeals Court

COMMONWEALTH vs. ROBERT LAFFOND.

No. 94-P-1961. September 29, 1995.

Regulation. Board of Health. Constitutional Law, Commerce clause, Interstate commerce.

At issue is the validity of a regulation of the board of health of the Town of Dalton forbidding any person from hauling garbage in a residential district during certain hours. [1]

The defendant was convicted of a single violation of the regulation and received a fine of $200. Before the commencement of the bench trial in the jury session of the District Court, the defendant moved to dismiss the

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[1] General Laws c. 111, § 31A, empowers a board of health to grant permits, and § 31B authorizes the board to enact rules and regulations for the control of transportation of offensive substances. In 1993, the town board of health adopted a regulation which reads as follows:

"Effective August 1, 1993, no removal, transportation or disposal of garbage, refuse, recyclable materials, offal or other offensive substances, or empty refuse vehicles, shall be permitted in any residential district between the hours of 7:00 P.M. and 7:00 A.M., Monday through Sunday. Violation of this regulation will result in a fine of $1,000. Each offense will be deemed a separate violation. If any portion, sentence or clause is subsequently held to be invalid, the remainder of the regulation shall be in full force and effect."

complaint. The trial judge denied the motion and found that the defendant had violated the regulation. We affirm the judgment below.

The statement of agreed facts, which was adopted as findings of fact by the trial judge, recounts that on the morning of September 22, 1993, at 5:36 A.M., the defendant was observed by a Dalton police officer operating a truck bearing the name "Berkshire Cleanway" on its side. Seeing that the defendant was operating the vehicle, which contained a load of debris, on a residential street, the officer stopped the defendant and informed him that he was in violation of the regulation. On September 24, 1993, the chief of police, at the direction of the Dalton board of health, applied for a complaint for process to issue from the clerk of the District Court (see G. L. c. 276, § 22). A complaint subsequently issued, and it is challenged by the defendant in this appeal.

The statement of agreed facts notes two incidents when the police stopped the defendant's vehicle for violating the regulation. The first incident, for which no complaint issued, involved an empty garbage truck. The second incident, which as noted above, involved a vehicle containing debris, is at issue in the case at bar. Because the defendant was not prosecuted for operating an empty garbage truck during the prescribed time period, he does not have standing to attack the regulation as being beyond the purview of the enabling legislation or as being discriminatory in regard to empty vehicles. See Bane v. Boston, 8 Mass. App. Ct. 552, 556 n.7 (1979).

To the extent that the defendant attempts to raise discriminatory treatment in regard to vehicles containing

debris, that claim, raised in one sentence without citation to any authority, does not constitute appellate argument and, therefore, need not be considered by this court. Mass. R.A.P. 16(a) (4), as amended, 367 Mass. 921 (1975). Lolos v. Berlin 338 Mass. 10, 13-14 (1958). Hillis v. Lake, 38 Mass. App. Ct. 221, 223 (1995).

The defendant contends that the regulation violates the commerce clause of the United States Constitution, art. I, § 8, cl. 3. [2] He does not dispute that the board has a legitimate interest in regulating the transport of waste materials within the town or that the regulation is not even-handed or nondiscriminatory in its operation against out-of-State businesses. See Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1979); Grocery Mfrs. of Am., Inc. v. Department of Public Health, 379 Mass. 70, 80-81 (1979). Rather, the defendant argues that the regulation excessively burdens interstate commerce in relation to the asserted benefits. Pike v. Bruce Church, Inc., supra. Raymond Motor Transp., Inc. v. Rice, 434 U.S. 429, 442 (1978). There is no factual support for that contention.

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[2] The defendant's memorandum in support of his motion to dismiss notes that Berkshire Clean-Way Rubbish Removal, Inc., transports wastes between the States of Massachusetts, New Hampshire, Vermont, Connecticut, and New York. The defendant does not have to cross a State line to invoke the protection of the commerce clause; any intrastate economic activities that affect interstate commerce fall within the ambit of the commerce clause. Wickard v. Filburn, 317 U.S. 111, 122-125 (1942). See also Hodel v. Virginia Surface Mining & Reclamation Assn., 452 U.S. 264, 277 (1981).

As the defendant would have it, the daylight time restrictions set out in the regulation prevent early morning collections of waste from Dalton for transport to distant landfill and incinerator sites which close in the early afternoon. He also claims that the limited hours burden emergency operations when municipal fire departments call upon his employer, Berkshire Clean-Way Rubbish Removal, Inc., to remove and transport burning materials to a safe disposal area. "The State's power to regulate commerce is the greatest when it regulated matters (like garbage collection) traditionally considered to be of local concern." Commonwealth v. B & W Transp., Inc., 388 Mass. 799, 807 (1983), and cases cited, appeal dismissed sub nom. Burke Distrib. Corp. v. Massachusetts, 464 U.S. 957 (1983).

Unlike the situation described in Diamond Waste, Inc. v. Monroe County, Ga, 939 F.2d 941, 946 (11th Cir. 1991), a case upon which the defendant relies, the regulation in the instant case does not prevent garbage, trash, or waste of any kind from being transported into the town from other locations. So long as a regulation is rationally related to a legitimate State goal, it will be upheld unless it unduly discriminates against interstate commerce, or the burdens imposed on interstate commerce outweigh the State's interest in enforcing the regulation. See Raymond Motor Transp., Inc. v. Rice, 434 U.S. at 442-443; Tribe, American Constitutional Law § 6-5 (2d ed. 1988).

The only possible burden on interstate commerce raised by the defendants is that removal operations may be delayed and are less convenient because of the time restrictions and the location of its current transfer station in a residential district. These inconveniences and burdens,

however, are not disproportionate when balanced against the Town's interest, the preservation of tranquility during hours when residents are likely to be at rest. See National Tank Truck Carriers, Inc. v. City of New York, 677 F.2d 270, 274 (2d Cir. 1982). On the record, there is no showing that the regulation in the case at bar is irrational.

Judgment affirmed.

Leslie R. Long for the defendant.
Joel B. Bard for the Commonwealth.

COMMONWEALTH OF MASSACHUSETTS

CENTRAL BERKSHIRE DISTRICT COURT

At Pittsfield, Massachusetts, June 2, 1994

In the case of
COMMONWEALTH vs. ROBERT LAFFOND.

Docket Number 9327 CR 2564:
Case submitted on stipulated Agreed Statement of Facts - Finding of Guilty before Judge Barbalunga on June 2, 1994.

COMMONWEALTH OF MASSACHUSETTS

CENTRAL BERKSHIRE DISTRICT COURT-JURY SESSION

At Pittsfield, Massachusetts, June 2, 1994

In the case of
COMMONWEALTH vs. ROBERT LAFFOND.

Jury Docket Number 9427 JC 0224:
Jury trial was waived by the Defendant. Case was submitted on stipulated Agreed Statement of Facts - Finding of Guilty before Judge Barbalunga on June 2, 1994. Notice of Appeal to Appeals Court of Massachusetts filed June 6, 1994

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

94-P-1961

COMMONWEALTH

vs.

ROBERT J. LAFFOND.

ORDER

The petition for rehearing filed by the appellant having been considered, it is ordered that the said petition be, and the same hereby is, denied.

By the Court (Dreben, Kass & Greenberg, JJ.),

Lena M. Wong

Assistant Clerk

Entered: October 26, 1995.

Supreme Judicial Court for the Commonwealth of Massachusetts
1412 Courthouse, Boston, Massachusetts 02108
(617) 557-1020

..eslie R. Long, Esquire
26 North Sound Beach Ave.
Riverside, CT 06878

RE: Docket No. FAR-08133

COMMONWEALTH
vs.
ROBERT LAFFOND

NOTICE OF DENIAL OF F.A.R. APPLICATION

Please take note that on November 27, 1995, the above-captioned Application for Further Appellate Review was denied.

Jean M. Kennett, Clerk

Dated: November 27, 1995

To: Joel B. Bard, Esquire
Leslie R. Long, Esquire

AGREED STATEMENT OF FACTS

1. This matter concerns a Board of Health Regulation entitled *Transportation of Garbage on Public Ways* (hereinafter referred to as "the Regulation"). The regulation provides:

> Effective August 1, 1993, no removal, transportation or disposal of garbage, refuse, recyclable materials, vehicles, shall be permitted in any residential district between the hours of 7:00 p.m. and 7:00 a.m., Monday through Sunday. Violation of this regulation will result in a fine of $1,000. Each offense will be deemed a separate violation. If any portion, sentence or clause is subsequently held to be invalid, the remainder of the regulation shall be in full force and effect.
>
> /s/ Board of Health, Vivian I. Mason, John W. Bartels, Sr., and Paul C. Carter.

The regulation was adopted pursuant to the provisions of M.G.L. c.111, §31B "in order to limit noise and odor and provide peace of mind within the residential zoning district of the Town of Dalton."

The regulation became effective on July 16, 1993 in accordance with the provisions of MGL c. 111, §31.

2. On August 4, 1993, Dalton Police Officer Rene J. Bonneau observed a truck with the name Berkshire Cleanway on the side travelling on a residential street, specifically Park Avenue, in Dalton, at 5:19 a.m. in the morning. A picture of the truck is attached as Exhibit A.

3. Officer Bonneau observed that the truck cab was brown, and the attached trailer contained two bins, one

painted green and the other brown.

4. Officer Bonneau stopped the vehicle and informed the driver that he was in violation of the Regulation.

5. The driver identified himself to Officer Bonneau as Robert J. Laffond.

6. Robert J. Laffond presented Officer Bonneau with a commercial registration for the truck and for its trailer that indicated that Berkshire Cleanway Rubbish Removal, Inc. (BCI) was the owner of the vehicle. Mr. Laffond stated to Officer Bonneau that BCI was the owner of the vehicle. Officer Bonneau recorded Mr. Laffond's driver's license number and the two registration numbers for the commercial cab and trailer.

7. BCI engaged in the interstate trucking of waste and recyclable materials. BCI has a single place of business; consisting of an office, garage and recycling facilities located at 10 Park Avenue (also known as Bridle Path Road) in the Town of Dalton, Berkshire County, Commonwealth of Massachusetts with a zip code of 01226. In addition, BCI has parked up to two trucks, without containers, at Freadman Steel, in Pittsfield, Massachusetts.

8. On September 22, 1993, Officer Bonneau stopped Mr. Laffond at 5:36 a.m. on Park Avenue Extension, in Dalton, while driving the same vehicle shown in Exhibit A. The truck contained construction and demolition debris. The parties agree that the Dalton police report dated 9/23/93 pm case 93-09-1282 be attached. Any facts in the police report that are inconsistent with the facts herein are not accepted. Allegations in para. 3 and 4 of the police report regarding BCI intentions to violate the Regulation are not agreed to by Mr. Laffond.

9. The location of BCI is shown on the Regional Locus Map, drawn by Hill Engineers, Architects, Planners and attached as Exhibit B. The only approach to or exit from

the BCI place of business is over High Street or Park Avenue Extension, both of which are residential streets in the Town of Dalton.

10. The truck driven by Mr. Laffond at the time he was stopped by Officer Bonneau had been parked the evening before at the BCI place of business at 10 Park Avenue Extension in the Town of Dalton. Mr. Laffond was leaving the BCI garage at the time he was stopped by Officer Bonneau.

11. Officer Bonneau prepared a report of the incident and forwarded the report to the Chief of Police. Sergeant Lawrence Higgins, Acting Chief of Police, forwarded the incident report of the violation of the Regulation to the Town of Dalton Board of Health.

12. On September 24, 1993, Police Chief Daniel Filiault, at the direction of the Town of Dalton Board of Health, filed an application for a Complaint to issue against Mr. Laffond for violation of the Regulation.

13. On October 28, 1993, a hearing was held in the Pittsfield District Court on the Town of Dalton's application for a Complaint. The driver, by and through his attorney, moved to dismiss the matter.

14. On March 17, 1994, at a pre-trial conference, the Court (Barbalunga, J.) allowed defendant to resubmit his Motion to Dismiss and set a hearing on that Motion to Dismiss for May 6, 1994 at 9:00 a.m. at the Pittsfield District Court. The parties agreed at the pre-trial conference that the matter probably could be submitted on an Agreed Statement of Facts. On May 6, 1994, the Court ordered the parties to file any memoranda by May 27, 1994 and scheduled the matter for disposition on June 2, 1994.

/s/ Leslie R. Long, Esq.

Dated: May 26, 1994

/s/ Joel B. Bard, Esq.